

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN**

IN RE:

CRAPP FARMS PARTNERSHIP,

Debtor.

**Case No. 17-11601
Chapter 11**

**AGCO FINANCE LLC'S MOTION FOR DEBTOR TO ASSUME
OR REJECT THREE LEASES**

NOW COMES, AGCO Finance LLC ("AGCO") by its attorney, Christopher M. Seelen, Ruder Ware L.L.S.C., who states to and moves the Court for an Order as follows:

I. Motion for Debtor to Assume or Reject Three Leases

1. The Debtor filed this case on May 3, 2017.
2. AGCO, as Lessor, is a party to three equipment leases¹ with the Debtor, as Lessee, which are in default, as follows:

<u>Lease/ Contract</u>	<u>Leased Equipment</u>	<u>Serial Number</u>	<u>Amount Necessary to Cure Default²</u>
-3950	AG Chem 1100B Rogator Raven Hawkeye Guidance System	AGCA1100PGNSL1030 1100	\$ 51,052.29
-2357	AG Chem 1100B Rogator Raven Hawkeye Guidance System	AGCA1100CGNCN1110 1108	\$ 58,108.17
-3945	AG Chem 1100B Rogator Raven Hawkeye Guidance System	AGCA1100CGNSL1033 1094	\$ <u>50,215.05</u>
TOTAL DEFAULT			\$159,375.51

¹ These are "true leases" which have significant purchase price options.

² Defaults as of March 27, 2017.

3. A copy of the three Leases and UCC Financing Statements are attached hereto as Exhibit "A."³

4. The remaining lease payments and total payoff, including purchase price option, are as follows:

<u>Lease</u>	<u>Remaining Lease Payments</u>	<u>Total Payoff⁴</u>
-3950	\$ 95,685.68	\$ 283,753.37
-2357	\$108,910.28	\$ 333,126.50
-3945	\$ 95,685.68	\$ 282,916.13
Total	\$300,281.64	\$ 899,796.00

5. Pursuant to 11 U.S.C. § 365(d)(2), on request of a party to a lease, the Court may order the Debtor to determine within a specified time whether to assume or reject a contract or lease.

6. AGCO asserts that the Court should set June 9, 2017 as the deadline for the Debtor to assume or reject the three Leases.

7. In the event the Debtor desires to assume the three Leases, the Debtor should be required to pay the sum of \$159,375.51, the amounts necessary to cure the defaults as identified above, plus any further amounts that come due after the May 3 filing date.

8. Upon information and belief, the Debtor may be using the Leased Equipment for spring planting. Accordingly, it is important that the Debtor decide quickly whether it is going to assume or reject the Leases.

9. In the event the Debtor rejects the Leases by failing to pay \$159,375.51 to AGCO by June 9, 2017, then AGCO requests the following relief:

- A. That the Debtor be ordered to immediately surrender the Leased Equipment to AGCO;
- B. That AGCO be granted immediate relief from stay so that AGCO may initiate a state court replevin action to obtain possession of the Leased Equipment. AGCO requests that the Court order that Rule 4001(a)(3) is not applicable, thereby waiving the 14-day stay of any order for relief and allowing AGCO to immediately enforce and implement the Court's order granting relief from the automatic stay herein when granted;

and

³ The Exhibit was filed with the Court, but, it is only being mailed to Debtors and their counsel. If you would like to receive a copy of the Exhibit, please contact Pioneer Bank's attorney, Christopher M. Seelen at 715-834-3425.

⁴ Payoff as of May 3, 2017 plus accruing attorneys fees

- C. AGCO be granted an administrative expense claim for the value of Debtor's use of the Leased Equipment during this bankruptcy.

WHEREFORE, AGCO requests an Order as follows:

- A. Finding that due and appropriate notice of this motion has been given and that no further notice need be given under the circumstances;
- B. Ordering the Debtor to assume or reject the three Leases by June 9, 2017;
- C. If the Debtor desires to assume the three Leases, then ordering the Debtor to pay the amounts necessary to cure the default as identified in this Motion;
- D. If the Debtor rejects the Leases, then:
- i. Ordering the Debtor to immediately surrender the Leased Equipment to AGCO;
 - ii. Granting AGCO immediate relief from stay and waiving the 14-day stay of any order for relief, thereby allowing AGCO to immediately enforce and implement the Court's order granting relief from the automatic stay herein when granted;
 - iii. Granting AGCO an administrative expense claim for the Debtor's use of the Leased Equipment during this bankruptcy;
- E. For such other and further relief as the Court in its discretion deems just and equitable under the circumstances.

Dated at Eau Claire, Wisconsin this 17th day of May, 2017.

RUDER WARE

Christopher M. Seelen/s/
Christopher M. Seelen
Attorney for AGCO Finance LLC
State Bar #1029724

402 Graham Avenue
P.O. Box 187
Eau Claire, WI 54702-0187
Telephone: 715.834.3425

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

IN RE:

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**Case No. 17-11601
Chapter 11**

**NOTICE OF MOTION FOR DEBTOR TO ASSUME
OR REJECT THREE LEASES**

PLEASE TAKE NOTICE, that AGCO Finance LLC by its attorneys, Ruder Ware, L.L.S.C., has filed papers with the court For Debtor to Assume or Reject Three Leases in this case, a copy of which is enclosed.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to approve the motion as requested, or if you want the Court to consider your views on the motion, then on or before **May 31, 2017**, you must:

File with the court a written request for a hearing at:

Clerk of Court
United States Bankruptcy Court
500 South Barstow Street
Eau Claire, WI 54701

You must also mail a copy to:

Attorney Christopher M. Seelen
Ruder Ware, L.L.S.C.
P. O. Box 187
Eau Claire, WI 54702-0187

and to:

U.S. Trustee's Office
780 Regent Street, Suite #304
Madison, WI 53715

In the event that a response is timely filed, the Court will set the matter for hearing and send out a notice of time and date thereof.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated at Eau Claire, Wisconsin, this 17th day of May, 2017.

RUDER WARE, L.L.S.C.

Christopher M. Seelen/s/
Christopher M. Seelen
Wisconsin State Bar No. 1029724
Attorney for AGCO Finance LLC

P.O. ADDRESS:

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AFFIDAVIT OF MAILING

Sarah L. Hanson, being sworn, states that on May 17, 2017, she mailed properly enclosed in a post-paid envelope a true and correct copy of a Notice of Motion and AGCO Finance LLC's Motion For Debtor to Assume or Reject Three Leases, the originals of which have been electronically filed herein, to each of the following parties at their respective addresses unless received electronically through the filing of this document:

To:

U.S. Trustee
780 Regent Street
Suite 304
Madison, WI 53715

(via electronic filing only)

Attorney Eliza M. Reyes
Krekeler Strother, S.C.
2901 West Beltline Highway
Suite 301

Madison, WI 53713
(via electronic filing only)

Attorney Jennifer M. Schank
Krekeler Strother, S.C.
2901 West Beltline Highway
Suite 301
Madison, WI 53713

Attorney Kristin J. Sederholm
2901 West Beltline Highway
Suite 301
Madison, WI 53713

AND All creditors on the attached mailing matrix.

Subscribed and sworn to before me
this 17th day of May, 2017.

RUDER WARE, L.L.S.C.

Paulette M. Oas/s/
Paulette M. Oas, Notary Public
Eau Claire County, Wisconsin
My commission expires 03/29/2019.

Sarah L. Hanson/s/
Sarah L. Hanson
402 Graham Avenue
Post Office Box 187
Eau Claire, Wisconsin 54702